



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01646/2015

THE IMMIGRATION ACTS

Heard at Field House
On 11th April 2016

Decision & Reasons Promulgated
On 18th May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

Y L
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Palmer, instructed by Wimbledon Solicitors
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of China born on [] 1981 and she appealed against a decision of the respondent dated 25th January 2015 to remove her from the United

Kingdom, as a person unlawfully in the United Kingdom, under Section 10 of the Immigration and Asylum Act 1999.

2. In a decision promulgated on 18th June 2015, First-tier Tribunal Judge Lagunju dismissed the appellant's appeal on asylum grounds and also under Appendix FM and paragraph 276ADE of the Immigration Rules
3. The appellant claimed that her return to China would place her at risk from the Chinese authorities because of an incident which occurred before she left in 2004 during a Fu Yin Pai (otherwise known as 'the Shouters') religious meeting. She claims that when in China and in 2003, she attended the Fu Yin Pai Church, an unregistered church in China otherwise named as "The Shouters" and during an authorities' raid, in an attempt to obstruct or prevent the arrest of her father, she assaulted one of the police officers and hit him a number of times with a metal object. Subsequently she had become actively involved in an evangelical church in the UK.
4. First-tier Tribunal Judge Lagunju dismissed the appellant's appeal and I set aside his decision. The judge did not made an overall or cumulative assessment of the risks to the appellant on return and therefore there was an error of law.
5. Although I find the overall assessment flawed the First-tier Tribunal Judge made series of findings as follows which have been preserved (except I do not preserve paragraph 17 below):

"12. The appellant fears return to China on the basis of her religion as a Christian. The appellant's fear is threefold; the appellant fears return firstly because of an incident which occurred before she left in 2004 during a Fu Yin Pai religious meeting. Secondly because she has become actively involved in an evangelical Christian church in the UK. The appellant fears that she will face persecution at the hands of the Chinese authorities as a member of an unregistered Christian church. Finally the appellant fears return as she has since her departure had a second child and is currently pregnant with her third child.

13. The appellant claims that her parents were Christians and attended the Fu Yin Pai church which is an unregistered church in China; as a result the gathering received a lot of attention from the authorities. The appellant gives the impression in her witness statement that she only attended the church meetings because her parents instructed her to and not because of any personal conviction she had.

14. The appellant claims that during a Fu Yin Pai meeting that she attended with her parents sometime in October 2003, the authorities raided the meeting and began rounding up all the male attendees. In an attempt to obstruct or prevent the arrest of her father the appellant assaulted one of the police officers by hitting him a number of times with a metal object. Immediately afterwards, the appellant managed to escape the meeting and arrest with the aid of a friend. After hiding for some time, arrangements were made by the appellant's mother for the appellant to leave the country. According to the appellant wanted posters were erected and the authorities visited her parents' home looking for her.

15. *The appellant, with the assistance of a snakehead, fled China to the UK via France (where she remained for 2 months). It is notable that she did not claim asylum in France or claim asylum in the UK for 10 years. I consider the appellant's behaviour with s.8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 in mind. I consider that the appellant's failure to claim asylum in France and the delay of 10 years in the UK does not assist the appellant's claim. Although I accept that the appellant was under the control of a snakehead in France and in the UK, I consider the appellant's behaviour as part of my overall global assessment of the appellant's credibility.*
 16. *I found the appellant to be on the whole a credible and reliable witness. I accept the appellant's account about her parents' religion and involvement with Fu Yin Pai. I accept also and find that the appellant attended Fu Yin Pai gatherings principally because of her parents and not due to any conviction of her own. I accept that the Fu Yin Pai meeting was raided in October 2003 as claimed as this behaviour by the authorities is consistent with the background evidence; the authorities tend to disrupt meetings and refuse requests for premises and planning permission in a bid to make life difficult for unregistered churches.*
 17. *I note however on the appellant's own evidence that during the raid the authorities were interested in the male attendees and had no interest in the appellant who was also at the meeting. I note also the appellant's lack of personal conviction or involvement with Fu Yin Pi is consistent with the lack of interest the authorities had in her during the raid or on any other occasion.*
 18. *I find it is entirely reasonable and it follows that the police would be looking for the appellant following the meeting because she committed a criminal offence, in that, she assaulted a police officer during the operation of his duties. Despite the fact that the police officer's acts could be considered persecutory and unfounded, the fact remains she committed an assault.*
 19. *I find therefore that the authorities had no interest in the appellant for a convention reason and were not seeking to persecute her but rather arrest and possibly prosecute her for assaulting a police officer. The fact that she was at a Fu Yin Pai meeting may exacerbate matters, however I do not find that the appellant's actions (assaulting a police officer) would give rise to a risk on return for a convention reason."*
6. I found an error of law in that decision in that it was not apparent that the judge had followed the guidance in **QH (Christians – risk) China CG [2014] UKUT 00086**, in particular paragraph 137(iv) of that decision and country guidance which stated:

“There may be a risk of persecution, serious harm or ill-treatment engaging international protection for certain individual Christians who choose to worship in unregistered churches and who conduct themselves in such a way as to attract the authorities' attention to them or their political, social or cultural views.”
 7. I specifically noted that the judge had identified that the appellant was credible, despite his findings in relation to Section 8 of the Asylum and Immigration

(Treatment of Claimants) Act 2004 that she delayed in claiming asylum between her entry in 2004 and claim in 2014. The judge also found that she had assaulted a police officer.

8. There were detailed submissions made before me at the resumed hearing and Mr Palmer referred to his skeleton argument noting that the appellant had committed a criminal offence and that she had committed this in the circumstances of a banned religious movement and of a meeting in which she had attacked a police officer. Although there was no evidence of an arrest warrant it was unsafe to find that there was no formal move for her detention bearing in mind it was accepted by the First-tier Tribunal Judge that there were posters of her identity. Groups such as "The Shouters" were seen as people who were willing to undermine the integrity of the state and this would bring them into conflict with the Chinese authorities and therefore the Refugee Convention was engaged.
9. It was submitted that she would be on a formal record. As identified in QH an individual who puts their head above the parapet and adherents of such group would be at risk. She has attracted the attention of the authorities as she was part of a group because of her parents but it was the perception of her engagement and involvement. It was submitted that it would be very difficult for her to suggest that she would be able to relocate safely or that she would not be subject of a record which would be accessible throughout China. She would be arrested under Chinese law, particularly for assault against a police officer. Any punishment would be severe and this was referred to in his skeleton argument. A previous Operational Guidance found that prison conditions were frequently degrading and the likelihood of the reasons that she would be arrested and detained and ill-treated.
10. The second issue was the serious violence against those considered to be from "The Shouters" and a further issue was that although there had been a relaxation of the laws in relation to the number of children permitted within China, it was still possible that she was at grave risk of forced sterilisation because she now had more than two children. The country guidance was silent as to whether someone who gave birth to a third child would be at risk. She had completely ignored the Chinese law and acted in breach. She now had two foreign-born children and AX (family planning scheme) China [2012] UKUT 00097 was ambiguous on this point. Certainly the children would not have the SCP certificate and their right to schooling, housing or free medical care should they return and this was an issue in relation to Section 55.
11. Mr Melvin submitted that the appellant was not at risk for anything. It was on her own evidence she was not an advocate of a Christian organisation but attended on behalf of her parents. There was no actual evidence provided that she was evangelising or that the police were looking at anything other than the male section of the congregation. She did not belong to the sect and just being in attendance did not automatically lead to her being wanted. The Chinese authorities disrupted the meetings but were not imprisoning the congregation and there was no objective

evidence that just being a member would constitute a reason under the Refugee Convention.

12. There was nothing to suggest that the posters were anything other in a local area. Since arriving in the UK she had ten years to claim asylum and provide any further evidence and she had failed to do so. It was thus concluded there was no arrest warrant and she was not on a black list. The submissions of an arrest warrant were just speculative. There was no evidence of her evangelising in the UK or in China or that she would re-join "The Shouters" on her return. The evidence was now that she was a member of the True Jesus Church in the UK.
13. In regard to the third issue of children the rules were changing on the child policy because of the demographic change and it was difficult to see how apart from a financial fine she would face any difficulties in the children having been born. It was not accepted that children being born prior to January 2016 would be at risk. Internal relocation was possible as the family planning differed greatly across the country.
14. The appellant would return with her husband who was the father of the children and who did not have immigration status. The family would be returned together and I was enjoined to consider Section 117 where the emphasis was on the burden to the taxpayer. There was little integration and the appellant would take the benefit of schooling and healthcare.
15. In conclusion, as indicated in my previous determination regarding the error of law, there are certain material facts which were preserved. The appellant's parents are active members of the unregistered and banned Fu Yin Pai, The Shouters Church in China and the Chinese police raided a meeting of this church attended by the appellant, her mother and her father. In an attempt to prevent the police from arresting her father the appellant assaulted a police officer and escaped from the meeting and went into hiding.
16. As such she committed a criminal offence and it was accepted that there were wanted posters put around the local area showing her and her parents' home was visited by the police.
17. I state at the outset that I am not persuaded that she would be at risk because of the birth of two further children being in the United Kingdom. She has one child already in China but it was clear that the Chinese one child policy has now been relaxed and although the appellants would be subject to discrimination, I am not persuaded that this would prevent them from return to China. I return, however, to this point later in my decision.
18. In **QH (Christians - risk) China** the following has been set out:

"Risk to Christians in China

- (1) *In general, the risk of persecution for Christians expressing and living their faith in China is very low, indeed statistically virtually negligible. The Chinese*

constitution specifically protects religious freedom and the Religious Affairs Regulations 2005 (RRA) set out the conditions under which Christian churches and leaders may operate within China.

- (2) *There has been a rapid growth in numbers of Christians in China, both in the three state registered churches and the unregistered or 'house' churches. Individuals move freely between State-registered churches and the unregistered churches, according to their preferences as to worship.*
- (3) *Christians in State-registered churches*
 - (i) *Worship in State-registered churches is supervised by the Chinese government's State Administration for Religious Affairs (SARA) under the RRA.*
 - (ii) *The measures of control set out in the RRA, and their implementation, whether by the Chinese state or by non-state actors, are not, in general, sufficiently severe as to amount to persecution, serious harm, or ill-treatment engaging international protection.*
 - (iii) *Exceptionally, certain dissident bishops or prominent individuals who challenge, or are perceived to challenge, public order and the operation of the RRA may be at risk of persecution, serious harm, or ill-treatment engaging international protection, on a fact-specific basis.*
- (4) *Christians in unregistered or 'house' churches*
 - (i) *In general, the evidence is that the many millions of Christians worshipping within unregistered churches are able to meet and express their faith as they wish to do.*
 - (ii) *The evidence does not support a finding that there is a consistent pattern of persecution, serious harm, or other breach of fundamental human rights for unregistered churches or their worshippers.*
 - (iii) *The evidence is that, in general, any adverse treatment of Christian communities by the Chinese authorities is confined to closing down church buildings where planning permission has not been obtained for use as a church, and/or preventing or interrupting unauthorised public worship or demonstrations.*
 - (iv) *There may be a risk of persecution, serious harm, or ill-treatment engaging international protection for certain individual Christians who choose to worship in unregistered churches and who conduct themselves in such a way as to attract the local authorities' attention to them or their political, social or cultural views.*

- (v) *However, unless such individual is the subject of an arrest warrant, his name is on a black list, or he has a pending sentence, such risk will be limited to the local area in which the individual lives and has their hukou.*
- (vi) *The hukou system of individual registration in rural and city areas, historically a rigid family-based structure from which derives entitlement to most social and other benefits, has been significantly relaxed and many Chinese internal migrants live and work in cities where they do not have an urban hukou, either without registration or on a temporary residence permit (see AX (family planning scheme) China CG [2012] UKUT 00097 (IAC) and HC & RC (Trafficked women) China CG [2009] UKAIT 00027).*
- (vii) *In the light of the wide variation in local officials' response to unregistered churches, individual Christians at risk in their local areas will normally be able to relocate safely elsewhere in China. Given the scale of internal migration, and the vast geographical and population size of China, the lack of an appropriate hukou alone will not render internal relocation unreasonable or unduly harsh."*

19. I accept that the guidance in **QH** indicates that generally the risk of persecution for Christians expressing and living their faith in China is very low indeed and that there has been a rapid growth of numbers of Christians in China both in three state-registered churches and the unregistered house churches. The evidence in **QH** did not suggest that there is a consistent pattern of persecution or serious harm and that in general adverse treatment of Christian communities by the Chinese authorities was confined to closing down buildings.
20. However, as I identified in the error of law decision, there may be a risk of persecution, serious harm or ill-treatment engaged where those who choose to worship in unregistered churches and who conduct themselves in such a way as to attract the local authorities' attention. The question also surrounds the subject of an arrest warrant. As stated in **QH** that unless the appellant is subject to an arrest warrant her name is on a black list or she has a pending sentence such a risk will be limited to the local area in which she lives.
21. The evidence which was accepted by the First-tier Tribunal was that the appellant was on the whole found to be a credible and reliable witness and that the appellant's account of her parents' religion and involvement with the Fu Yin Pai was accepted. The fact that she attended those meetings not through her own conviction, but through that of her parents, does not dilute the fact that the Chinese authorities may well perceive that she is a member of that group. She was certainly present at the meeting and associated with that group.
22. Despite the fact that the authorities may be interested in the male attendees it was the appellant's evidence that she assaulted a police officer which is a serious offence and will be seen as a serious offence in China. Merely being a member of an outlawed group, according to the background evidence, can attract a sentence of

imprisonment. The Country of Origin Information Report on Christians in China (March 2016) at 5.1.2 quoted from the USSD Report

'Certain religious or spiritual groups are banned by law. The criminal law defines banned groups as "evil cults," and those belonging to them can be sentenced to prison'.

23. As I have set out above the judge of the First-tier Tribunal found it entirely reasonable [18 of that decision] that the police would be looking for the appellant following the meeting because she committed a criminal offence in that she "assaulted a police officer during the operation of his duties.
24. Although the judge states that the police officer's acts could be considered persecutory and unfounded, the fact remains that she committed assault. Although the judge found it possible she would be merely prosecuted for assaulting a police officer the judge also found "the fact that she was at a Fu Yin Pai meeting may exacerbate matters". As stated it was accepted that the police were looking for her and the appellant's evidence was that there were "wanted posters" erected and the authorities visited her parents' home looking for her. The findings of the First-tier Tribunal Judge would suggest that she may well be on a black list.
25. On the preserved findings I accept there may well be an arrest warrant and that it is conceivable that her name is on a black list despite the fact that she claims that she was not necessarily, at that time, a member through conviction, of The Shouters.
26. I note that in the light of the wide variation and local officials' responses to unregistered churches individual Christians in their local areas will normally be able to relocate but in the light of the fact that it is claimed that she is on a black list I am not satisfied that she would be able to relocate specifically with two very young children. They may well need to be registered in order to access services. As stated in **AX** (the headnote) there is a system of registration in operation in China

'All social benefits and obligations derive from hukou, including entitlement to a birth permit, social security, contraception and medical care, education, housing, land and pension provision. Although it remains difficult to change hukou, the system has failed to prevent mass internal migration to the large cities in modern times, with hundreds of thousands of people living away from their hukou. Nevertheless, women of fertile age are obliged to send back regular pregnancy tests to their hukou area, seek birth permits there, and comply with local family planning regulation'

27. I accept, following **QH** [4(iv)], that someone who conducts themselves in such a way as to attract attention to themselves would be at risk. She has attracted the attention of the authorities as she would have been perceived to have been part of the 'Fu Yin Pai' notwithstanding that she attended because of her parents. I do not find that the Chinese authorities would differentiate those who attended through conviction and those attending to be with their parents. That the Chinese authorities were targeting the men in the congregation ignores the fact that it is accepted that she assaulted a police officer to protect her father during the worship. There was background documentary evidence indicating that there was the serious violence against those

considered to be from underground church meetings and that the “The Shouters” were considered to be a cult or heretical sect [Canadian Refugee Board Report 2015][refugee Review Tribunal Australia 2007]. No firm evidence was produced to show that the authorities had relaxed their approach in this regard.

28. The extract from the Home Office Country Information and Guidance China Christians, March 2016 reported increasing harassment and noted at 6.1.13 that in 2014 Christians and practitioners of other faiths in China experienced the ‘harshest persecution seen in over a decade, including draconian measures taken by Xi Jinping’s administration to eliminate all religious political and social dissent’ and at Section 7 identified reports of more violence against Christians from various sources including CNN and Open Doors World Watch.
29. The is not however to be perceived just as a member of a banned sect. It was accepted that the appellant had assaulted a police officer and I thus conclude that, despite the effluxion of time, the appellant would have been arrested under Chinese law, particularly for assault against a police officer and, it is reasonable to conclude, that she may well continue to be of interest to the authorities for that offence. It was also accepted that there were posters in her local area identifying that she was wanted at the time and such interest may well continue. The authorities were also said by the appellant have visited her family home and that she had gone into hiding and as her evidence was found credible I would conclude that it would be difficult, on this evidence, and in these particular circumstances, to conclude that there was no arrest warrant or that she would not be on a wanted list. Punishment for the assault on a police officer could be severe and previous Operational Guidance found that prison conditions were frequently degrading. [China OGN December 2014 3.16.3] The refworld report on ‘Treatment of Ordinary Christian house church members by the Public Security Bureau (PSB) including treatment of children of house church members 2009-2014 indicates that members of unaffiliated religious groups are deemed unpatriotic and unlawful and subjected to coercive and punitive treatment. There is, therefore, a likelihood that she would be arrested and detained and ill-treated.
30. It was submitted that it would be very difficult for the appellant to be able to relocate safely or that she would not be subject of a record which would be accessible throughout China and on the background evidence I accept that. The UNHCR refworld report dated 23rd September 2015 confirmed that individuals detained at underground church meetings would have their names placed in PSD databases and

‘that individuals’ information is then stored and classified under one of five ‘security and political’ threat levels within a national ‘dynamic stability control maintenance database’ which is accessible by all officers within China’s ‘security apparatus’.

As the evidence accepted was that the police had visited her home looking for her there is reason to suppose that her identity was known (and indeed the appellant stated that the police obtained her photograph from her ID card [w/s 12]) or that the

meticulous documentation referred to in the refworld report would not have been longstanding.

31. Although I note QH which states that

'unless such an individual is the subject of an arrest warrant, his name is on a black list, or he has a pending sentence, such risk will be limited to the local area in which the individual lives and has their hukou',

the nature of the offence which she has committed may well have led to her falling into the risk category, for a religiously/politically motivated offence even if she did not join the Shouters on her return. Indeed the evidence recorded by Judge Lagunju at [22] was that she would rejoin the Shouters on her return if the True Jesus Church did not exist in China and it was accepted that the appellant was actively involved in a church in the UK and *'would continue to practise her faith openly in an unregistered church regardless of the consequences'*.

32. It is the cumulative effect of her offence and the perception that she would be associated with the Fu Pin Yai to which the Chinese authorities are antipathetic that places her at risk.

33. In total, the appellant now has two foreign-born children and a third child in China. It was submitted the appellant was at grave risk of forced sterilisation because she now had more than two children and that AX was ambiguous on the point of multiple births and the country guidance was silent as to whether someone who gave birth to a third child would be at risk.

34. There has been a relaxation of the laws restricting children born within China, and the background material (Telegraph Article) indicated a substantial relaxation in the laws. AX identified that hundreds of thousands of 'unauthorised children' are born each year and their loss of access to facilities does not in general reach the severity threshold for persecution. AX identified that although there were regular national campaigns to bring down the birth rate in provinces and local areas in general female returnees had no real risk of forcible sterilisation. AX also indicated that it is possible to internally migrate but that women were required to stay in touch with their hukou area. I note that the appellant does not have contact with her third child whom her ex partner removed in 2000. She would thus present with two children on return.

35. AX paragraph 191 (14) states

(14) 'Where a real risk exists in the 'hukou' area, it may be possible to avoid the risk by moving to a city. Millions of Chinese internal migrants, male and female, live and work in cities where they do not hold an 'urban hukou'. Internal migrant women are required to stay in touch with their 'hukou' area and either return for tri-monthly pregnancy tests or else send back test results. The country evidence does not indicate a real risk of effective pursuit of internal migrant women leading to forcible family planning actions, sterilisation or termination, taking place in their city of migration. Therefore, internal relocation will, in almost all cases, avert the risk in the hukou area. However, internal relocation may not be

safe where there is credible evidence of individual pursuit of the returnee or her family, outside the 'hukou' area. Whether it is unduly harsh to expect an individual returnee and her family to relocate in this way will be a question of fact in each case'

36. By way of contrast, I note from the Country Information Guidance 'China Contravention of national population and a family planning laws, July 2015 , stated at

Paragraph 2.3.6

'Since the announcement of the policy adjustment in November 2013, the Chinese Communist Party Central Committee and State Council jointly instructed local authorities to 'strictly control noncompliant births, particularly extra births, [and] seriously investigate and deal with illegal births.'

37. I do not find, on the evidence before me, that she would be at risk of forced sterilisation as she is not being sought outside her hukou for unauthorised births. She is not being sought for family planning contraventions and according to the Chinese authorities at the moment she only has one child. There is background evidence, however, to suggest that she may come to the attention of the authorities owing to 'multiple births' which would raise her 'profile'. Further, as cited above, *'Internal migrant women are required to stay in touch with their 'hukou' area and either return for tri-monthly pregnancy tests or else send back test results.* It is thus likely, to the lower standard, that, even if she tried to relocate, as she is wanted in her home area, she could be traced by the authorities through the requirement to stay in touch with her home 'hukou' area via the restrictions on birth control, and therefore come to the attention and be detained by the authorities through that route. She would therefore be at risk on return.
38. In this light of the findings of Judge Lagunju and my observations above I allow the appeal on asylum and human rights (article 3) grounds.

Notice of Decision

The appeal is allowed on Asylum grounds.

The appeal is allowed on Human Rights grounds (Article 3).

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of

their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 9th May 2016

Deputy Upper Tribunal Judge Rimington

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Rimington